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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Advanced Television Systems and )  
Their Impact Upon the Existing )  
Television Broadcast Service )

MM Docket No. 87-266

To: The Commission

**COMMENTS OF  
ASSOCIATION OF AMERICA'S PUBLIC TELEVISION STATIONS  
AND PUBLIC BROADCASTING SERVICE  
IN SUPPORT OF  
SUPPLEMENTS TO PETITIONS FOR RECONSIDERATION  
FILED BY PUBLIC TELEVISION LICENSEES**

The Association of America's Public Television Stations ("APTS") and the Public Broadcasting Service ("PBS")(collectively "APTS/PBS") hereby submit these Comments in support of the Supplements to Petitions for Reconsideration filed by several public television licensees filed in accordance with the Commission's July 2, 1997 Order authorizing the submission of supplements.<sup>1</sup> Most of those licensees were assigned DTV channels outside the core spectrum to be assigned for permanent DTV operation and either propose alternative DTV channels within the core<sup>2</sup> or request the opportunity to change their DTV allotment if in-core

<sup>1</sup> Order (DA 97-1377), released July 2, 1997.

<sup>2</sup> See, Supplement to Petition for Reconsideration filed by Central Michigan University (Stations WCMU-TV, WCML & WCMV); Supplement to Petition for Reconsideration and Clarification filed by Central Virginia Educational Telecommunications Corp. (Station WNVC(TV)); Supplement to Petition for Reconsideration of The Mississippi Authority for Educational Television, (Station WMAE-TV); Supplement to Petition for Reconsideration filed by Mountain Lake Public Broadcasting, Inc. (Station WCFE(TV)); Supplemental Information in Support of the Petition for Partial Reconsideration of Shenandoah Valley Educational

channels become available during the transition.<sup>3</sup> Others have been assigned DTV channels that adversely affect the licensee's ability to serve its community with a digital signal and those licensees suggest solutions tailored to the problems they have identified.<sup>4</sup> APTS/PBS urge the Commission to grant the requests of these public television licensees as long as their requests will not result in a meaningful loss of service by existing NTSC stations or will not unduly preclude a station with a DTV allotment from otherwise replicating its NTSC service area. In addition, APTS/PBS urge the Commission to pursue negotiations with the appropriate Canadian and Mexican authorities on their DTV plans. Finalizing those arrangements will enable licensees that have been unable to find suitable alternative in-core DTV channels because of Mexican allocations or uncertainty as to the Canadian plans for DTV to explore fully their options to improve their DTV channels.<sup>5</sup>

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Television Corporation (Station WVPT(TV)); Supplement to Petition for Reconsideration filed by Tri-State Public Telepix, Inc. (Station WNIN(TV)); Supplement to Petition for Reconsideration filed by University of New Hampshire d/b/a New Hampshire Public Television (Station WEKW-TV).

<sup>3</sup> See, Supplement to Petition for Reconsideration filed by Florida West Coast Public Broadcasting, Inc.; Supplement to Petition for Reconsideration filed by KVIE, Inc. (Station KVIE(TV)); Supplement to Petition for Reconsideration filed by Prairie Public Broadcasting, Inc. (Station KFME(TV), et al); Supplement to Petition for Reconsideration filed by Ohio State University (Station WOSU-TV).

<sup>4</sup> See, Supplement to Petition for Reconsideration filed by The Mississippi Authority for Educational Television (Station WMPN-TV et al. ); Supplement to Petition for Reconsideration filed by WXXI Public Broadcasting Council (Station WXXI(TV)); Supplement to Petition for Reconsideration filed by Western New York Public Broadcasting Association (Stations WNED-TV and WNEQ-TV).

<sup>5</sup> See, Supplement to Petition for Reconsideration of Community Television of Southern California (Station KCET(TV)); Supplement to Petition for Reconsideration filed by Educational Television Association of Metropolitan Cleveland (Station WVIZ-TV); Supplement to Petition

## **ARGUMENT**

APTS/PBS have been active participants in the Commission's Advanced Television rulemaking proceeding, filing comments and reply comments on several of the Commission's Notices of Proposed Rulemaking and joining with the Broadcasters Caucus in most of its filings. Throughout this proceeding, APTS/PBS's have sought to assure that the nation's public television licensees will be able to migrate to digital television operation in a manner that at least preserves, if not improves, their ability to serve their communities.

### **I. The Commission Should Grant Requests by Public Television Licensees to Substitute In-Core DTV Channels for Assigned DTV Channels Outside the Core**

In their Petition for Partial Reconsideration and Clarification ("Petition") of the Commission's Fifth and Sixth Reports and Orders in this proceeding,<sup>6</sup> APTS/PBS reiterated their concern about the Commission's allotting to public television licensees DTV channels outside the DTV spectrum core.<sup>7</sup> Allotments outside that core would require public television licensees to construct two DTV facilities, a requirement that would strain the financial ability of even the strongest public television licensees. Accordingly, APTS/PBS urged the Commission

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for Reconsideration filed by Western New York Public Broadcasting Association (Stations WNED-TV and WNEQ-TV); Supplement to Petition for Reconsideration filed by WXXI Public Broadcasting Council (Station WXXI-TV).

<sup>6</sup> Petition for Reconsideration and Clarification of Association of America's Public Television Stations and Public Broadcasting Service, pp. 7-16, filed June 13, 1997.

<sup>7</sup> APTS/PBS first urged the Commission to assign in-core DTV channels to public television stations in their Comments in response to the Commission's *Sixth Further Notice of Proposed Rulemaking*, 11 FCC Rcd. 10968 (1996). See, Comments of the Association of America's Public Television Stations and the Public Broadcasting Service at pp. 31-35 (November 22, 1996).

to give public television licensees assigned DTV channels outside the core the maximum flexibility to find alternative channels within the core, even if those in-core channels do not fully meet the principles employed by the Commission in adopting the DTV Table.<sup>8</sup>

In their Supplements, several public television licensees assigned DTV channels outside the core indicate that they have found alternative DTV channels inside the core that can be allocated in accordance with the Commission's allotment criteria for DTV stations. These licensees have requested that the Commission amend the DTV Table of Allotments to assign them those in-core channels.<sup>9</sup> APTS/PBS urge the Commission to grant those requests. As APTS/PBS argued in their Petition, allowing public television stations to use DTV channels in the core will avoid the drain on their limited financial resources caused by the need to construct two DTV facilities. This, in turn, would enhance the prospects that the stations would be able to continue serving the public after the transition and permit the stations to use more of their financial resources for programming.<sup>10</sup> For the reasons set forth above and in their Petition, APTS/PBS also request that the Commission make it clear that public television licensees

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<sup>8</sup> Petition at pp. 11-12.

<sup>9</sup> See Supplements of Central Michigan University, Central Virginia Educational Telecommunications Corp., Mississippi Authority for Educational Television, Mountain Lake Public Broadcasting, Inc., Shenandoah Valley Educational Television Corporation, Tri-State Public Telepix, Inc. and University of New Hampshire. In addition, Community Television of Southern California identified a channel inside the core which could be allotted except that it is short-spaced to a vacant Mexican NTSC allotment. In some cases, the DTV channels of other stations may also have to be changed, but, in all events, the alternative proposals conform with the FCC's DTV allotment principles.

<sup>10</sup> Petition at pp. 7-10.

assigned DTV channels outside the core will have the ability to obtain in-core channels should they become available during the transition.<sup>11</sup>

## **II. The Commission Should Coordinate DTV Arrangements with Canada and Mexico in Order to Permit Public Television Licensees to Find More Suitable DTV Channels**

Several other public television licensees with DTV Channels outside the core or facing other limitations which render their DTV allotment unsuitable have been unable to identify suitable alternative channels because of short-spacings to Mexican allotments<sup>12</sup> or uncertainty as to the standards Canada will adopt with respect to its DTV stations.<sup>13</sup> These licensees have urged the Commission to conduct negotiations with the Mexican authorities so that they can use the short-spaced channels or finalize the agreement with the Canadian authorities concerning their DTV plans so that these licensees can obtain better DTV allocations.

APTS/PBS support those requests. The lack of an agreement between the U.S. and Canada concerning the deployment of DTV facilities along the border between the two countries restricts the options for DTV channels available to stations along and near that border. Similarly, Community Television of Southern California has identified an in-core DTV channel

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<sup>11</sup> Petition at pp. 10-11. APTS/PBS also support the request of Pensacola Junior College to modify the coordinates of its DTV transmitter site in order to accommodate its proposal to improve the facilities of its NTSC and paired DTV facilities. See, Supplement to Petition for Reconsideration filed by Pensacola Junior College.

<sup>12</sup> See, Supplement to Petition for Reconsideration of Community Television of Southern California.

<sup>13</sup> See, Supplement to Petition for Reconsideration filed by Educational Television Association of Metropolitan Cleveland; Supplement to Petition for Reconsideration filed by Western New York Public Broadcasting Association; Supplement to Petition for Reconsideration filed by WXXI Public Broadcasting Council.

that it could use, instead of the out-of-core channel assigned by the Commission, if an agreement can be reached with the Mexican authorities concerning a short-spaced vacant NTSC allotment in Mexico. Hopefully, resolving those issues will enable these licensees to obtain better DTV channels than the DTV channels the Commission allocated to them. In all events, however, prompt completion of the negotiations with Canada and Mexico will let those licensees know their options so that they can make informed decisions as to how best to move into the digital world.

### **III. The Commission Should Protect the Pending Applications of Public Television Licenses for New Facilities and Permit Them to Provide DTV Service Over those Channels**

A number of public television licensees have submitted Supplements identifying pending applications for new or modified facilities that were filed with the Commission prior to the cut-off date for NTSC applications but that were not allotted paired DTV channels. These licensees also lack assurance that, if they are awarded construction NTSC permits or the channels for which they applied, they will be able to operate digitally on those channels. They seek an assurance from the Commission that grant of their NTSC applications is not precluded by the DTV table and that they can operate digitally on the channels for which they have applied.<sup>14</sup> APTS/PBS support those requests. As APTS/PBS noted in their Comments on the Commission's *Sixth Further Notice of Proposed Rulemaking*, *supra*, public television licensees

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<sup>14</sup> See, Supplement to Petition for Reconsideration filed by Western New York Public Broadcasting Association; Supplement to Petition for Reconsideration filed by WXXI Public Broadcasting Council; Supplement to Petition for Reconsideration filed by Mississippi Authority for Educational Television.

frequently need substantial lead time to generate the financial support necessary to file an application for a new station. Since a public television licensee is not a commercial entity with a bankable potential profit stream, it must develop interest in the project in its community and secure contributions from individuals and business entities before it can file an application for a construction permit. In some cases, a legislature must be convinced of the need for a public television station before an application can be filed. It would be unjust, as well as contrary to the public interest, for the Commission to nullify these efforts after the application was filed by not allocating the necessary channel or by depriving the licensee of the flexibility to construct either an NTSC or DTV facility. Further, licensees that decide to build NTSC facilities should be permitted to switch on the same frequency to DTV service for the reasons set forth in APTS/PBS' Petition.<sup>15</sup> Affording these licensees this flexibility will maximize their ability to serve their communities and to make the fullest use of the spectrum available for public broadcasting.

### **Conclusion**

As the Commission has recognized, the transition to digital television will impose significant costs on public television licensees and will strain their financial resources. Adopting the various proposals submitted by public television licensees in their Supplements will assist those licensees in making that transition. Accordingly, APTS/PBS urge the Commission to adopt the various proposals submitted by public television licensees in their Supplements as long

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<sup>15</sup> Petition at pp. 12-14.

as they will not materially diminish the ability of other stations to serve their existing audiences or to replicate their current service areas with their DTV facilities. Alternatively, APTS/PBS request that the Commission allot other DTV channels that will accomplish the goals sought by the public television licensees.

Respectfully submitted,

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Date: September 23, 1997



### **CERTIFICATE OF SERVICE**

I, Cynthia T. Miller, a secretary in the law firm of Arnold & Porter, do hereby certify that I have this 23rd day of September, 1997, caused to be served by first-class, United States mail, postage prepaid the foregoing "COMMENTS OF ASSOCIATION OF AMERICA'S PUBLIC TELEVISION STATIONS AND PUBLIC BROADCASTING SERVICE IN SUPPORT OF SUPPLEMENTS TO PETITIONS FOR RECONSIDERATION FILED BY PUBLIC TELEVISION LICENSEES" upon the following:

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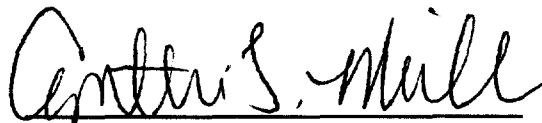
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